

Enforcement

“Law-abiding businesses support strong, consistent enforcement by DPR because this prevents violators from gaining an unfair advantage in the market.”

MARY-ANN WARMERDAM
DPR DIRECTOR

The goal of California's pesticide laws is to protect people and the environment from harm that could be caused by unsafe pesticide use. To help pesticide users follow the law and use pesticides safely, DPR uses many tools, including compliance help, inspections, and enforcement.

California is the only state that has a local pesticide enforcement network. County Agricultural Commissioners in California's 58 counties enforce pesticide laws, under DPR oversight and supported by county and state funding.

STRENGTHENING ENFORCEMENT

As residential development moves increasingly into agricultural areas, pesticide enforcement becomes more challenging. Most pesticide users are conscientious and obey the rules, but a few violators can threaten California's reputation as a world leader in agriculture and pesticide regulation. Carelessness or accidents involving pesticides can have serious consequences. There have been a few incidents when pesticides drifted onto workers or into rural communities, sickening many people. Harmful pesticide drift is illegal, and the public must be protected.

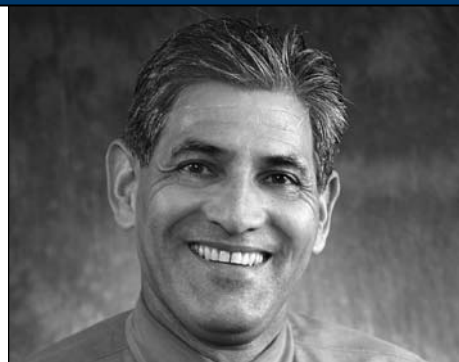
From DPR Director Mary-Ann Warmerdam's perspective, pesticide enforcement, while not broken, needed

strengthening. Building on Cal/EPA's goal of improving environmental enforcement, a pesticide Enforcement Response Policy was developed jointly by DPR and the Agricultural Commissioners in 2005. The goal was to help counties set priorities and make enforcement response more consistent. An informal DPR survey of pesticide enforcement actions found that between 2004 and 2005, proposed fines nearly doubled.

In October 2005, Governor Schwarzenegger directed DPR to adopt the policy as a regulation, which carries the weight of law. The new rules went into effect in late 2006. Like the earlier policy, they follow the common-sense idea that violators should be punished, and the most serious violations should draw the most serious penalties. Enforcement works best when those responsible for enforcing the law use tools suited for the job. Enforcement actions include warning letters, fines imposed by the Commissioner or a court, or action that suspends or cancels a violator's license to do business. Fines can be as low as \$50 and as high as tens of thousands of dollars, keyed to the seriousness of the offense. The regulations also encourage Agricultural Commissioners to give district attorneys the opportunity to file civil or criminal prosecution in serious cases.

I like working with the CACs, all striving to do the same thing – protecting people and the environment, making sure workers are protected, providing food safe to eat.

AL LOMELI



Al Lomeli

Pesticide Enforcement Branch

Al has worked in pesticide regulation for 29 years, 19 years with DPR and before that for the Fresno County Agricultural Commissioner (CAC). In California, county agricultural commissioners are responsible for local enforcement, under our oversight. Since 1995, Al has been supervisor of our Central Regional Office in Fresno, one of three DPR regional offices. He and his staff conduct joint inspections with their CAC counterparts to help evaluate how CAC offices are enforcing pesticide laws. They also work with the CACs to target areas that need improvement to strengthen local enforcement programs. Regional staff also help the CACs develop annual work plans designed to strengthen local enforcement. The work plans have clearly stated goals and performance measures, balancing DPR's statewide enforcement priorities with local conditions unique to each county.

With policy now having the force of regulations, some counties have seen a 10-fold increase in penalties. In two years, DPR plans to evaluate the impact of the new rules to see if there are areas where improvement is needed, either by amending the regulation or revising procedures.

GAINING COMPLIANCE WITH PESTICIDE LAWS

To be effective, strong enforcement must be accompanied by better inspections and compliance assistance. In 2006, DPR published a guide for employers to help them navigate the complex web of pesticide law and regulation. The guide can be downloaded from DPR's Web site and is available from many Agricultural Commissioners' offices.

The Department also printed thousands of wallet cards to help employers and employees interpret the codes on pesticide labels that signify what

protective equipment pesticide users must wear.

DPR is also funding a pilot project in Kern County designed to improve protections to workers and others from pesticide drift. Kern County is setting up a system to notify operators of bordering properties when restricted materials are to be used. This project complements a grower-sponsored effort ("Spray Safe") aimed at reducing drift incidents by strengthening farmer-to-farmer communication when pesticides are scheduled for application.

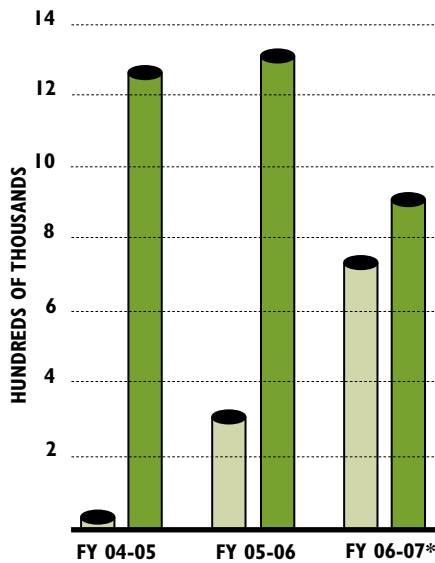
**THE CAC CONNECTION:
I-87PESTLINE**

In late 2006, DPR launched an automated, toll-free line that provides the phone number of the County Agricultural Commissioner and then offers to transfer the caller there. The recorded line, in English and Spanish, is designed to encourage timely filing of

DPR's new toll-free number helps callers connect to their County Agricultural Commissioner, a key to timely investigation of pesticide complaints.



AUDITS BOOST MILL PAYMENTS



MILL COLLECTED FROM AUDITS CIVIL PENALTIES

Mill fee collections after auditors turned their attention to unlicensed pesticide sellers and companies that had never before reported pesticide sales. The dark green bar represents past-due mill fees paid by companies after their audits, light green the associated civil penalties.
(*FY 06-07 – through March 2007)

pesticide complaints, a key to successful investigations.

“Our goal is to help people with pesticide problems as quickly as possible,” said DPR Director Mary-Ann Warmerdam. “The 1-87PestLine is an important innovation that will help us and our local partners, the County Agricultural Commissioners, enforce pesticide laws and protect the public. Despite our earlier outreach, many people seem to be unaware of how to report pesticide problems, or whom to call.”

Over the next two years, 1-87-PestLine will be listed in new telephone directories in the government pages under “Pesticide,” to make it easier to find.

HELPING COUNTIES IMPROVE ENFORCEMENT

DPR oversees the work of the County Agricultural Commissioners, who enforce pesticide laws locally. DPR’s regional office staff help Agricultural Commissioners develop annual work plans which detail each county’s priorities in improving enforcement, compliance, and permitting. (By mid-2007, DPR will post the work plans on our Web site.)

DPR staff also evaluate county enforcement efforts and work with counties

where improvements are needed. DPR’s evaluations used to be something of a “widget count,” simply totaling inspections, for example, without regard to what the inspection was for. We now use objective-based performance measures, which examine how well counties are targeting local problems and patterns of continuing violations.

MAKING POLICIES CLEARER

DPR traditionally communicated policies and procedures to Agricultural Commissioners in formal guidance letters. However, with hundreds of such letters issued over many years, searching for specific topics was difficult, as was knowing when a policy had been superseded by a newer one.

So we are consolidating policies and standards into eight manuals that will be the single source of guidance, available online and updated regularly. Three are completed: *Investigative Procedures, Laws and Regulations*, and *Restricted Materials and Permitting*. Nearly done are *Inspection Procedures*, *Enforcement Guidelines*, and *Hearing Officer Sourcebook*. Staff is working on an overview of the regulatory program, and a final volume, *Guidelines on Interpreting Laws and Regulations*.

CAL/EPA ENFORCEMENT INITIATIVE

Cal/EPA and its boards, departments, and offices have been working for more than two years on a project to foster compliance with environmental laws and regulations.

Other goals of the Agency-wide enforcement initiative include:

- Targeting resources to the areas of highest environmental risk and high noncompliance.
- Improving consistency in statewide enforcement response.
- Ensuring clear and enforceable rules that are fairly enforced.
- Measuring enforcement and environmental results.

COUNTY AGRICULTURAL COMMISSIONER PROFILE

Frank Carl

Sacramento County Agricultural Commissioner Frank Carl strolls from his home to a park at the edge of the Carmichael community and points toward a small orange grove. "I'm sure that many people who live around here wonder what orange trees are doing in the park," he observes.

Not so many years ago, they would have wondered what a park was doing in the middle of the orange groves.

Carl, 57, has been a County Agriculture Commissioner for 17 years. He grew up in Grass Valley and graduated from California State University, Chico, before joining Yuba County as a pest detection surveyor. Then he went on to Merced and Yolo, where he served as deputy commissioner, before taking the top job in Sacramento County.

How has pest management changed? "It's a lot more technical in some respects, particularly when it comes to considering buffer zones for a pesticide spray application or fumigation," he says. "Our regulations today are much more refined – they're based on actual measurements and science, rather than the seat-of-the-pants assessments that we used to make in the field."

Carl also credits pest control advisers for helping growers adopt more sophisticated pest management techniques. "They've really helped us as far as encouraging IPM (integrated pest management)."

On the urban side, Carl believes pesticide concerns haven't changed as much as people think. "Even 30 years ago, we had calls from folks out in rural areas who didn't appreciate it when their roses were hurt by spraying from a neighbor farm." It's not that suburbanites are so much more environmentally sensitive today, says Carl. "There's just more of them...the percentage of complaints is probably about the same."

Ag-urban friction is now a permanent part of the landscape – in places where farming still has a foot-hold. "Who would have thought that all of Los Angeles could be paved over," says Carl, "when for many years, it was the No. 1 agricultural county in the state."



"Our regulations today are much more refined, based on actual measurements and science."

**FRANK CARL
SACRAMENTO COUNTY
AGRICULTURAL COMMISSIONER**





Paul Curtis

Product Compliance Branch

Paul, with DPR since 1993, is an auditor whose job is to help make sure companies register their products with DPR as required by law and pay the mill fee on their pesticide sales, a fee that helps support California's regulatory program. A major focus of his branch since early 2006 has been to unravel and understand the complex retail purchasing networks used by the "big box" stores. He and his colleagues – who in earlier years had focused more on the agricultural chemical industry – have found that many home-and-garden pesticide retailers had not paid the mill fee or were selling some unregistered products. Bringing them into compliance levels the playing field for all pesticide sellers.

Most companies are cooperative, once they know the rules. Other companies know the rules and when I visit for an audit, their body language tells me they've done something wrong. It's an auditor's job to find out what.

PAUL CURTIS

PROMOTING SAFE PRODUCTS AND AN EQUITABLE MARKETPLACE

To make sure pesticides are safe to use in California, they must be evaluated not only by U.S. EPA but also by DPR scientists before being allowed on the market here. To ensure pesticides have California registration, specialists from DPR's Product Compliance and Pesticide Enforcement branches conduct about 600 inspections a year wherever pesticides are sold. This includes plant nurseries, home-and-garden centers, agricultural chemical dealers, pool and spa centers, and industrial, institutional, restaurant, and hospital suppliers. When staff uncovers sales of unregistered products, sellers must pay any money and interest owed, and they are subject to civil penalties.

The same goes for sellers who fail to pay the fee levied on pesticide sales. The 2.1-cent fee on each dollar of sales supports pesticide enforcement, health and safety, and other DPR programs. To ensure law-abiding businesses are protected from unfair competitors, DPR must make sure firms selling pesticides pay their fair share of this fee.

DPR relies on pesticide sellers to report sales accurately and pay the fee on the

first sale in California. There are about 11,000 brand-name pesticide products registered in California, sold by about 1,300 registrants (companies that make pesticides), 450 dealers, and 100 brokers.

In 2004, DPR formed the Product Compliance Branch to consolidate product enforcement activities. Increased inspection and audits by the new branch found more than \$30 million in unreported sales. The resulting payments and penalties from dealers and retailers, along with higher petroleum costs (which push up pesticide product prices), helped increase mill fee payments to \$46.2 million in 2005-06, compared with about \$41.6 million the previous year.

The Product Compliance Branch audits pesticide registrants, dealers and brokers, and others selling pesticide products into or within California. Audits recently targeted structural pest control franchises, retail drug, pet supply, and hardware chains, the dental and medical supplies industry, and "big box" retailers.

Auditors found significant gaps in reporting of certain types of pesticide transactions, including Internet sales of industrial, institutional, and consumer-



use pesticides, sales by intermediate brokers, and sales through the distribution centers of nationwide retailers. Auditors discovered that shortcomings in state law led to underreporting of pesticide sales and underpayment of fees.

As a result, DPR sponsored legislation (Assembly Bill 1011, Matthews) that in 2006 expanded DPR's broker licensing requirements to cover not only sales of agricultural products but also pesticides sold for use in residential, industrial, and institutional settings. Newly licensed pesticide brokers, now aware of their legal obligations, joined registrants (mainly pesticide manufacturers), pest control dealers, and agricultural pesticide brokers in reporting pesticide sales and paying the mill assessment on those sales.

In mid-2006, budget increases proposed by the Governor and approved by the Legislature allowed DPR to more than double its auditing staff, from three to seven. This restored cuts made more than five years before and provided staff to help identify and track brokers and large retailers who are selling and distributing pesticides into California.

Getting better at what we do

The Governor's budget for 2007-08 proposes enhancing DPR's capabilities to prevent adverse effects from pesticides and strengthen programs to encourage compliance with pesticide laws. This will help DPR meet challenges to improve California air and water quality, and protect workers and others from harm that can be caused by pesticides.

RESTORING PESTICIDE POLLUTION PREVENTION GRANTS

The budget proposes two critical programs to prevent pesticide impacts, with a particular emphasis on people. First, the new \$780,000 grant program would advance reduced-risk pest management solutions in agricultural and urban settings. (DPR grant funding has not been available since the Pesticide Alliance Grant Program was eliminated in 2003.) Second, the budget provides for extending the Healthy Schools Act to private child day care facilities. Adding one position and \$149,000 will allow DPR to revise existing outreach materials and training to promote the adoption of integrated pest management in day care settings.

PREVENTING HARM TO PEOPLE

To fully protect the most vulnerable people in California, and to achieve DPR's goal of zero major illness incidents, we must make sure our rules reflect the latest developments in health and safety. A \$634,000 budget item proposes five positions to address pesticide risks to air quality and to workers. This will help DPR develop risk reduction safety measures, adopt statewide rules, improve worker and physician outreach, and take pesticide product registration actions. Reducing farmworker illnesses, long a priority of California's pesticide regulatory program, has also taken on urgency with new environmental justice concerns. The worker outreach program will address worker safety, including providing information on employee rights to file confidential complaints about pesticide exposure, and how to do so.

ENCOURAGING BETTER COMPLIANCE

Gaining compliance with pesticide rules is a critical underpinning of our capacity to protect people and reduce illness incidents. In the past two years, DPR has significantly strengthened pesticide enforcement, including implementing regulations that make enforcement response more consistent by ensuring the most serious violations draw the most serious penalties. Local enforcement is carried out by Agricultural Commissioners in each of California's 58 counties, with oversight, guidance and training from DPR liaison staff. A \$667,000 budget item would add six positions so DPR could enhance this program.